

U.S. Serial No. 09/813,352
Amendment dated 17 September 2003
Reply to Office Action mailed 17 June 2003

REMARKS

Claims 30 and 31 have been canceled. Claim 25 has been amended to specify that the seed, seedling or plant comprises a polynucleotide. The polynucleotide comprises a heterologous promoter operatively linked to a nucleic acid sequence encoding ABI5. Support for this language can be found at page 15, lines 10-14 in the example of one constitutive promoter and at page 17, lines 19-20 which refers to references describing heterologous inducible promoters. Claim 26 has been amended to specify that the promoter is a constitutive promoter. Claim 27 has been amended to specify the promoter as an inducible promoter. New claim 36 has been added to specify that the heterologous promoter may be a constitutive promoter, an inducible promoter or a derepressible promoter. Support for these types of promoters can be found in original claim 26 and at page 7, lines 24-26. New claim 38 has been added to claim the promoter as a derepressible promoter. It is submitted that these amendments do not constitute new matter and their entry is requested.

The Examiner rejected claims 30 and 31 under 35 U.S.C. § 112, first paragraph, for lack of enablement. The cancellation of claims 30 and 31 obviates this rejection, and its withdrawal is requested.

The Examiner rejected claims 25-31 under 35 U.S.C. § 112, second paragraph, for being indefinite for various reasons advanced at pages 6-9 of the Office Action.

Claim 25 has been amended to recite the term "abscisic acid insensitive 5" for the acronym "ABI5."

Claim 25 has been amended as suggested by the Examiner, i.e., transgene has been changed to a polynucleotide. The polynucleotide comprises a heterologous promoter operatively linked to a nucleic acid sequence encoding ABI5.

Claim 27 has been amended to recite an inducible promoter in view of the amendment of claim 25 to recite such a promoter.

Claim 28 has been amended to specify that the overproduction of ABI5 is with comparison to an untransformed plant. Applicants note that the Examiner suggested this comparison language

U.S. Serial No. 09/813,352
Amendment dated 17 September 2003
Reply to Office Action mailed 17 June 2003

with respect to the 112, second paragraph rejection of claims 30 and 31 and believe that this language is also appropriate for claim 28.

Claim 29 has been amended to specify that the hypersensitivity of the plant to ABA is with comparison to an untransformed plant. Applicants note that the Examiner suggested this comparison language with respect to the 112, second paragraph rejection of claims 30 and 31 and believe that this language is also appropriate for claim 29.

Claims 30 and 31 have been canceled.

It is submitted that the amendments to the claims obviate the 35 U.S.C. § 112, second paragraph rejection of the claims. Withdrawal of this rejection is requested.


The Examiner has rejected 25 and 27-31 under 35 U.S.C. § 102(a) as being anticipated by Finkelstein et al. (*The Plant Cell* 12:599-609 (April 2000)). Claim 25 has been amended to specify that the seed, seedling or plant comprises a polynucleotide which comprises a heterologous promoter operatively linked to a nucleic acid sequence encoding ABI5. It is submitted that this designation of a heterologous promoter distinguishes the polynucleotide of the claims from the BAC containing the wild-type *ABI5* gene described by Finkelstein et al. Thus, Finkelstein et al. does not anticipate the claims as amended. Withdrawal of this rejection is requested.

The Examiner has rejected 25 and 27-31 under 35 U.S.C. § 102(a) as being anticipated by Lopez-Molina et al. (*Plant Cell Physiol* 41:541-547 (May 2000)). Claim 25 has been amended to specify that the seed, seedling or plant comprises a polynucleotide which comprises a heterologous promoter operatively linked to a nucleic acid sequence encoding ABI5. It is submitted that this designation of a heterologous promoter distinguishes the polynucleotide of the claims from the BAC containing the wild-type *ABI5* gene described by Lopez-Molina et al. Thus, Lopez-Molina et al. does not anticipate the claims as amended. Withdrawal of this rejection is requested.

In view of the above amendments and remarks, it is submitted that the present claims satisfy the requirements of the patent statutes and are patentable over the prior art. Reconsideration and

U.S. Serial No. 09/813,352
Amendment dated 17 September 2003
Reply to Office Action mailed 17 June 2003

early notice of allowance are requested. The Examiner is invited to telephone the undersigned in order to expedite prosecution of the present application.

RESPECTFULLY SUBMITTED,					
<i>Name and Reg. Number</i>	Jeffrey L. Ihnen, Registration No. 28,957				
<i>Signature</i>				<i>Date</i>	17 September 2003
<i>Address</i>	Rothwell, Figg, Ernst & Manbeck 1425 K Street, N.W., Suite 800				
<i>City</i>	Washington	<i>State</i>	D.C.	<i>Zip Code</i>	20005
<i>Country</i>	U.S.A.	<i>Telephone</i>	202-783-6040	<i>Fax</i>	202-783-6031

2312-109.amend.wpd